

## ENVIRONMENTAL MANAGEMENT EFFORTS—Continued

Fee base (dollars)	Fee (dollars)	Fee (percent)	Incr. (percent)
500,000,000 .....	7,972,396	1.59	0.58
750,000,000 .....	9,423,463	1.26	0.55
1,000,000,000 .....	10,786,788	1.08	.....
Over \$1.0 billion .....	10,786,788	.....	0.55

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36371, July 22, 2009]

**970.1504-1-7 Fee base.**

(a) The fee base is an estimate of necessary allowable costs, with some exclusions. It is used in the fee schedules to determine the maximum annual fee for a fixed fee contract. That portion of the fee base that represents the cost of the Production, Research and Development, or Environmental Management work to be performed, shall be exclusive of the cost of source and special nuclear materials; estimated costs of land, buildings and facilities whether to be leased, purchased or constructed; depreciation of Government facilities; and any estimate of effort for which a separate fee is to be negotiated.

(b) Such portion of the fee base, in addition to the adjustments in paragraph (a) of this subsection, shall exclude—

(1) Any part of the estimated cost of capital equipment (other than special equipment) which the contractor procures by subcontract or other similar costs which is of such magnitude or nature as to distort the technical and management effort actually required of the contractor;

(2) At least 20% of the estimated cost or price of subcontracts and other major contractor procurements;

(3) Up to 100% of the estimated cost or price of subcontracts and other major contractor procurements if they are of a magnitude or nature as to distort the technical and management effort actually required of the contractor;

(4) Special equipment as defined in 970.1504-1-8;

(5) Estimated cost of Government-furnished property, services and equipment;

(6) All estimates of costs not directly incurred by or reimbursed to the operating contractor;

(7) Estimates of home office or corporate general and administrative expenses that shall be reimbursed through the contract;

(8) Estimates of any independent research and development cost or bid and proposal expenses that may be approved under the contract;

(9) Any cost of work funded with uncosted balances previously included in a fee base of this or any other contract performed by the contractor;

(10) Cost of rework attributable to the contractor; and

(11) State taxes.

(c) In calculating the annual fee amounts associated with the Production, Research and Development, or Environmental Management work to be performed, the fee base is to be allocated to the category reflecting the work to be performed and the appropriate fee schedule utilized.

(d) The portion of the fee base associated with the Production, Research and Development, or Environmental Management work to be performed and the associated schedules in this part are not intended to reflect the portion of the fee base or related compensation for unusual architect-engineer, construction services, or special equipment provided by the management and operating contractor. Architect-engineer and construction services are normally covered by special agreements based on the policies applying to architect-engineer or construction contracts. Fees paid for such services shall be calculated using the provisions of 915.404-4-71-5 relating to architect-engineer or construction fees and shall be in addition to the operating fees calculated for the Production, Research and Development, or Environmental Management work to be performed. Special equipment purchases shall be addressed in accordance with the provisions of 970.1504-1-8 relating to special equipment.

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(e) No schedule set forth in 915.404-4-71-5 or 970.1504-1-6 shall be used more than once in the determination of the fee amount for an annual period, unless prior approval of the Senior Procurement Executive, or designee, is obtained.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36371, 36378, July 22, 2009]

### 970.1504-1-8 Special equipment purchases.

(a) Special equipment is sometimes procured in conjunction with management and operating contracts. When a contractor procures special equipment, the DOE negotiating official shall determine separate fees for the equipment which shall not exceed the maximum fee allowable as established using the schedule in 915.404-4-71-5(h).

(b) In determining appropriate fees, factors such as complexity of equipment, ratio of procurement transactions to volume of equipment to be purchased and completeness of services should be considered. Where possible, the reasonableness of the fees should be checked by their relationship to actual costs of comparable procurement services.

(c) For purposes of this subsection, special equipment is equipment for which the purchase price is of such a magnitude compared to the cost of installation as to distort the amount of technical direction and management effort required of the contractor. Special equipment is of a nature that requires less management attention. When a contractor procures special equipment, the DOE negotiating official shall determine separate fees for the equipment using the schedule in 915.404-4-71-5(h). The determination of specific items of equipment in this category requires application of judgment and careful study of the circumstances involved in each project. This category of equipment would generally include:

(1) Major items of prefabricated process or research equipment; and

(2) Major items of preassembled equipment such as packaged boilers, generators, machine tools, and large electrical equipment. In some cases, it would also include special apparatus or

devices such as reactor vessels and reactor charging machines.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36371, July 22, 2009]

### 970.1504-1-9 Special considerations: Cost-plus-award-fee.

(a) When a management and operating contract is to be awarded on a cost-plus-award-fee basis, several special considerations are appropriate.

(b) All annual performance incentives identified under these contracts are funded from the annual total available fee, which consists of a base fee amount (which may be zero) and a performance fee amount (which typically will consist of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both).

(c) The annual total available fee for the contract shall equal the product of the fee(s) that would have been calculated for an annual fixed fee contract and the classification factor(s) most appropriate for the facility/task. If more than one fee schedule is applicable to the contract, the annual total available fee shall be the sum of the available fees derived proportionately from each fee schedule; consideration of significant factors applicable to each fee schedule; and application of a Classification Factor(s) most appropriate for the work.

(d) Classification Factors applied to each Facility/Task Category are:

Facility/task category	Classification factor
A .....	3.0
B .....	2.5
C .....	2.0
D .....	1.25

(e) The contracting officer shall select the Facility/Task Category after considering the following:

(1) *Facility/Task Category A.* The main focus of effort performed is related to—

(i) The manufacture, assembly, retrieval, disassembly, or disposal of nuclear weapons with explosive potential;

(ii) The physical cleanup, processing, handling, or storage of nuclear radioactive or toxic chemicals with consideration given to the degree the nature of the work advances state of the art